

MANDATE

United States Court of Appeals

FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 23rd day of August, two thousand nineteen.

Present:

José A. Cabranes,
Debra Ann Livingston,
Raymond J. Lohier, Jr.,
Circuit Judges.

NATIONAL LABOR RELATIONS BOARD

Petitioner,

v.

GOWANUS STAFFING, INC.

Respondent.

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No. 19-1990-ag

Board Case No.:

29-CA-208094

JUDGMENT ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

This cause was submitted upon the application of the National Labor Relations Board for summary entry of a judgment against Respondent, Gowanus Staffing, Inc., its officers, agents, successors, and assigns, enforcing its order dated June 7, 2019, in Case No. 29-CA-208094, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, Gowanus Staffing, Inc., its officers, agents, successors, and assigns, shall abide by said order. (See attached Order and Appendix).

MANDATE ISSUED ON 08/23/2019

Mandate shall issue forthwith.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk




A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit




NATIONAL LABOR RELATIONS BOARD

v.

GOWANUS STAFFING, INC.

ORDER

Gowanus Staffing, Inc. of Brooklyn, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Suspending, discharging or otherwise discriminating against employees for holding the position of union shop steward or engaging in union activities.
 - (b) In any like or related manner interfering, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act.
 - (a) Within 14 days from the date of the Board's Order, offer Jamal Watts-Tarver reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.
 - (b) Make Tarver whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of this decision.
 - (c) Compensate Tarver for search-for-work and interim employment expenses regardless of whether those expenses exceed his interim earnings.
 - (d) Compensate Tarver for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 29, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.
 - (e) Within 14 days from the date of this Order, remove from its files any reference to the unlawful suspension and discharge of Tarver, and within

3 days thereafter, notify him in writing that this has been done and that the suspension and discharge will not be used against him in any way.

- (f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
- (g) Within 14 days after service by the Region, post at the facility of J&J Farms Creamery Inc., 57-48 49th Place, Maspeth, New York, the only facility involved herein, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed, or is otherwise prevented from posting the notice at the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 13.
- (h) Within 21 days after service by the Region, file with the Regional Director for Region 29 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES

**POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES
COURT OF APPEALS ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

**FEDERAL LAW UNDER SECTION 7 OF THE NATIONAL LABOR
RELATIONS ACT GIVES YOU THE RIGHT TO**

Form, join, or assist any union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT suspend, discharge, or otherwise discriminate against you for holding a union position, such as shop steward, or engaging in union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, offer full reinstatement to Jamal Watts-Tarver to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Jamal Watts-Tarver whole for any loss of earnings and other benefits resulting from our unlawful suspension and discharge of him, less any net interim earnings, plus interest, and **WE WILL** also make him whole for reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Jamal Watts-Tarver for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and **WE WILL** file with the Regional Director of Region 29 within 21 days of the date the amount of backpay as fixed, either by agreement or Board order, a report allocating backpay to the appropriate calendar years.

WE WILL, within 14 days from the date of this Order, remove from our files any and all references to the unlawful suspension and discharge of Jamal Watts-Tarver, and **WE WILL**, within 3 days thereafter, notify him in writing that this has been done and that we will not use the suspension and discharge against him in any way.

GOWANUS STAFFING, INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

2 Metro Tech Center
100 Myrtle Avenue
5th Floor
Brooklyn, NY 11201-4201
Phone: 718-330-7713
Hours: 9:00 a.m. to 5:30 p.m.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/29-CA-208094 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (718) 765-6190.